

KELLER BENVENUTTI KIM LLP
TOBIAS S. KELLER (SBN 151445)
tkeller@kbkllp.com
DARA L. SILVEIRA (SBN 274923)
dsilveira@kbkllp.com
650 California Street, Suite 1900
San Francisco, California 94108
Tel.: +1 415 364 6793
Fax: +1 650 636 9251

BRETT M. SCHUMAN (SBN 189247)
bschuman@goodwinlaw.com
RACHEL M. WALSH (SBN 250568)
rwalsh@goodwinlaw.com

GOODWIN PROCTER LLP
Three Embarcadero Center
San Francisco, California 94111
Tel.: +1 415 733 6000
Fax.: +1 415 677 9041

HONG-AN VU (SBN 266268)
hvu@goodwinlaw.com

GOODWIN PROCTER LLP
601 S. Figueroa Street, 41st Flr.
Los Angeles, California 90017
Tel.: +1 213 426 2500
Fax: +1 213 623 1673

*Attorneys for Plaintiff and Debtor and
Debtor in Possession Anthony S. Levandowski*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:
ANTHONY SCOTT LEVANDOWSKI,
Debtor.

ANTHONY LEVANDOWSKI, an individual,
Plaintiff,
v.
UBER TECHNOLOGIES, INC.
Defendant.

Bankruptcy Case
No. 20-30242 (HLB)
Chapter 11

Adv. Pro. No. 20-03050 (HLB)

**ANSWER TO DEFENDANT UBER
TECHNOLOGIES, INC.'S AMENDED
COUNTERCLAIMS; AND
AFFIRMATIVE DEFENSES**

1 Anthony Scott Levandowski (“Levandowski”), as debtor and debtor in possession in the
2 above-captioned Chapter 11 case (the “Chapter 11 Case”), and as Counterclaim Defendant in the
3 above-captioned adversary proceeding (the “Adversary Proceeding”), by and through his
4 attorneys, hereby states as follows:

5 **THE PARTIES**

6 1. In response to Paragraph 1, Levandowski states that he lacks knowledge or
7 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
8 denies each and every allegation set forth therein.

9 2. In response to Paragraph 2, Levandowski admits the allegations set forth therein.

10 **JURISDICTION AND VENUE**

11 3. In response to Paragraph 3, Levandowski admits that he filed a Chapter 11
12 voluntary petition on March 4, 2020 in the United States Bankruptcy Court for the Northern
13 District of California in the matter, *In re Anthony Scott Levandowski*, Bankruptcy Petition No. 20-
14 30242 (HLB). Levandowski further states that Paragraph 3 contains legal contentions as to which
15 no response is required. Except as expressly admitted, Levandowski denies each and every
16 allegation in this Paragraph.

17 4. In response to Paragraph 4, Levandowski states that this Paragraph contains legal
18 contentions as to which no response is required. Except as expressly admitted, Levandowski
19 denies each and every allegation in this Paragraph.

20 5. In response to Paragraph 5, Levandowski admits that venue is proper in this Court
21 pursuant to 28 U.S.C. § 1409(a) and this Court’s July 29, 2020 Order Granting Stipulation to
22 Withdraw Arbitration and Litigate Indemnity Dispute in Bankruptcy Court. Pursuant to that
23 Stipulation, Levandowski does not dispute that venue is proper before this Court with respect to
24 Uber’s Counterclaims. Except as expressly admitted, Levandowski denies each and every
25 allegation in this Paragraph.

26 **FACTS**

27 6. In response to Paragraph 6, Levandowski refers to his allegations in Paragraphs 1–
28 252 of his Complaint.

1 7. In response to Paragraph 7, Levandowski admits he worked at Google in a division
2 referred to as "Project Chauffeur." Except as expressly admitted, Levandowski denies each and
3 every allegation in this Paragraph.

4 8. In response to Paragraph 8, Levandowski admits that he had entered into a term
5 sheet with Uber by February 22, 2016. Levandowski further states that he lacks knowledge or
6 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
7 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
8 denies each and every allegation in this Paragraph.

9 9. In response to Paragraph 9, Levandowski admits that he was interviewed by Stroz
10 employees on March 22 and 23, 2016, and also states that Stroz interviewed him on April 2, 2016
11 as well. Levandowski further states that he lacks knowledge or information sufficient to form a
12 belief regarding the truth of the allegations therein, and therefore denies each and every allegation
13 set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in
14 this Paragraph.

15 10. In response to Paragraph 10, Levandowski admits that Stroz interviewed him and
16 drafted a memo that summarized his interview that stated that Stroz had asked him about "side
17 projects" but denies that the Stroz memo from which the allegations in Paragraph 10 rely is
18 accurate and complete. Except as expressly admitted, Levandowski denies each and every
19 allegation in this Paragraph.

20 11. In response to Paragraph 11, Levandowski admits that Otto had acquired Tyto with
21 Uber's consent in May 2016. Levandowski further states that he lacks knowledge or information
22 sufficient to form a belief regarding the truth of the allegations regarding Uber's knowledge, and
23 therefore denies them. Except as expressly admitted, Levandowski denies each and every
24 allegation in this Paragraph.

25 12. In response to Paragraph 12, Levandowski admits that Stroz interviewed him and
26 drafted a memo that stated that he had communicated that information found on his devices was
27 stored in the normal course of his work at Google, that he was not aware of the volume of Google
28 information Stroz found on his devices, and that he accurately told Uber that as of the date of the

1 interviews, he did not intend to rely on any information or data from Google in his work for Uber.
2 However, Levandowski denies that the Stroz memo from which the allegations in Paragraph 10
3 rely is accurate and complete. Except as expressly admitted, Levandowski denies each and every
4 allegation in this Paragraph.

5 13. In response to Paragraph 13, Levandowski states that the written attestation
6 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
7 inconsistent with the contents therein.

8 14. In response to Paragraph 14, Levandowski denies the allegations therein.

9 15. In response to Paragraph 15, Levandowski denies the allegations therein.

10 16. In response to Paragraph 16, Levandowski admits that he and Uber entered into
11 the Indemnification Agreement on April 11, 2016 as part of a transaction for Uber to acquire
12 Ottomotto and Otto Trucking. Levandowski further states that he lacks knowledge or information
13 sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each
14 and every allegation set forth therein.

15 17. In response to Paragraph 17, Levandowski denies the allegations therein.

16 18. In response to Paragraph 18, Levandowski states that the allegations reference a
17 writing, and to the extent that writing exists, it speaks for itself. Levandowski therefore denies
18 any and all allegations to the extent inconsistent with the contents therein.

19 19. In response to Paragraph 19, Levandowski states that he lacks knowledge or
20 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
21 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
22 denies each and every allegation in this Paragraph.

23 20. In response to Paragraph 20, Levandowski states that this Paragraph contains legal
24 contentions as to which no response is required. Except as expressly admitted, Levandowski
25 denies each and every allegation in this Paragraph.

26 21. In response to Paragraph 21, Levandowski denies the allegations therein.

27 22. In response to Paragraph 22, Levandowski admits to the allegations therein.

28 23. In response to Paragraph 23, Levandowski denies the allegations therein.

1 24. In response to Paragraph 24, Levandowski states that the indictment referenced
2 therein pertaining to the matter, *United States of America v. Anthony Scott Levandowski*, Case
3 No. 3:19-cr-00377-WHA (N.D. Cal. filed Aug. 15, 2019), speaks for itself, and therefore denies
4 any and all allegations to the extent inconsistent with the contents therein.

5 25. In response to Paragraph 25, Levandowski states that the indictment referenced
6 therein pertaining to the matter, *United States of America v. Anthony Scott Levandowski*, Case
7 No. 3:19-cr-00377-WHA (N.D. Cal. filed Aug. 15, 2019) speaks for itself, and therefore denies
8 any and all allegations to the extent inconsistent with the contents therein.

9 26. In response to Paragraph 26, Levandowski states that he lacks knowledge or
10 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
11 denies each and every allegation set forth therein.

12 27. In response to Paragraph 27, Levandowski states that the August 30, 2019 letter
13 from Uber to Levandowski referenced therein, and the Indemnification Agreement also
14 referenced therein speaks for themselves, and therefore denies any and all allegations to the extent
15 inconsistent with the contents therein.

16 28. In response to Paragraph 28, Levandowski admits that he received letters from
17 Uber's counsel dated September 11, 2019, September 27, 2019, December 31, 2019, and March
18 27, 2020. Levandowski further states that the letters dated September 11, 2019, September 27,
19 2019, December 31, 2019, and March 27, 2020 referenced therein speak for themselves, and
20 therefore denies any and all allegations to the extent inconsistent with the contents therein.

21 29. In response to Paragraph 29, Levandowski states that the final award referenced
22 therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent
23 with the contents therein.

24 30. In response to Paragraph 30, Levandowski states that the judgment referenced
25 therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent
26 with the contents therein.

27 31. In response to Paragraph 31, Levandowski admits that on March 4, 2020, he filed a
28 Chapter 11 voluntary petition listing Uber as a potential creditor with a claim valued at \$1.

1 Levandowski further states that the petition and attendant documents filed therewith speak for
2 themselves, and therefore denies any and all allegations to the extent inconsistent with the
3 contents therein.

4 32. In response to Paragraph 32, Levandowski states that he lacks knowledge or
5 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
6 denies each and every allegation set forth therein. Levandowski denies that he had fraudulently
7 concealed any information when he negotiated the Indemnification Agreement. Except as
8 expressly admitted, Levandowski denies each and every allegation in this Paragraph.

9 33. In response to Paragraph 33, Levandowski states that the judgment in the matter,
10 *United States of America v. Anthony Scott Levandowski*, Case No. 19-cr-00377-WHA (N.D. Cal.)
11 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
12 inconsistent with the contents therein.

13 34. In response to Paragraph 34, Levandowski states that he lacks knowledge or
14 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
15 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
16 denies each and every allegation in this Paragraph.

17 35. In response to Paragraph 35, Levandowski admits the allegation therein.

18 36. In response to Paragraph 36, Levandowski states that the Google Arbitration
19 Award referenced therein speaks for itself, and therefore denies any and all allegations to the
20 extent inconsistent with the contents therein.

21 37. In response to Paragraph 37, Levandowski states that the written opinion of the
22 Google Arbitration Panel referenced therein speaks for itself, and therefore denies any and all
23 allegations to the extent inconsistent with the contents therein.

24 38. In response to Paragraph 38, Levandowski states that the written opinion of the
25 Google Arbitration Panel referenced therein speaks for itself, and therefore denies any and all
26 allegations to the extent inconsistent with the contents therein.

1 39. In response to Paragraph 39, Levandowski states that the Arbitration Award and
2 judgment referenced therein speaks for itself, and therefore denies any and all allegations to the
3 extent inconsistent with the contents therein.

4 40. In response to Paragraph 40, Levandowski states that this Paragraph contains legal
5 contentions as to which no response is required. Except as expressly admitted, Levandowski
6 denies each and every allegation in this Paragraph.

7 41. In response to Paragraph 41, Levandowski states that the Indemnification
8 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
9 extent inconsistent with the contents therein. Levandowski further states that he lacks knowledge
10 or information sufficient to form a belief regarding the truth of the allegations therein, and
11 therefore denies each and every allegation set forth therein. Except as expressly admitted,
12 Levandowski denies each and every allegation in this Paragraph.

13 42. In response to Paragraph 42, Levandowski states that the Indemnification
14 Agreement speaks for itself, and therefore denies any and all allegations to the extent inconsistent
15 with the contents therein.

16 43. In response to Paragraph 43, Levandowski states that the Indemnification
17 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
18 extent inconsistent with the contents therein.

19 44. In response to Paragraph 44, Levandowski states that the Indemnification
20 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
21 extent inconsistent with the contents therein.

22 45. In response to Paragraph 45, Levandowski states that this Paragraph contains legal
23 contentions as to which no response is required. Except as expressly admitted, Levandowski
24 denies each and every allegation in this Paragraph.

25 46. In response to Paragraph 46, Levandowski states that the amended complaint in
26 *Waymo LLC v. Uber Technologies, Inc. et al.*, Case No. 3:17-cv-00939-WHA (N.D. Cal.) and the
27 finding of the Arbitration Panel speaks for itself, and therefore denies any and all allegations to
28 the extent inconsistent with the contents therein. Levandowski further states that this Paragraph

1 contains legal contentions as to which no response is required. Except as expressly admitted,
2 Levandowski denies each and every allegation in this Paragraph.

3 47. In response to Paragraph 47, Levandowski admits that he had requested consent
4 from Uber for Otto to acquire Tyto, and Uber provided that consent. Levandowski further states
5 that he lacks knowledge or information sufficient to form a belief regarding the truth of the
6 allegations therein, and therefore denies each and every allegation set forth therein. Except as
7 expressly admitted, Levandowski denies each and every allegation in this Paragraph.

8 48. In response to Paragraph 48, Levandowski denies the allegations therein.
9 Levandowski further states that he lacks knowledge or information sufficient to form a belief
10 regarding the truth of the allegations therein, and therefore denies each and every allegation set
11 forth therein.

12 49. In response to Paragraph 49, Levandowski states that the Google Arbitration
13 Award referenced therein speaks for itself, and therefore denies any and all allegations to the
14 extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies
15 each and every allegation in this Paragraph.

16 50. In response to Paragraph 50, Levandowski states that the Indemnification
17 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
18 extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies
19 each and every allegation in this Paragraph.

20 51. In response to Paragraph 51, Levandowski admits that he was interviewed by Stroz
21 employees on March 22 and 23, 2016, and also adds that he was interviewed again on April 2,
22 2016. Levandowski further states that he lacks knowledge or information sufficient to form a
23 belief regarding the truth of the allegations therein, and therefore denies each and every allegation
24 set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in
25 this Paragraph.

26 52. In response to Paragraph 52, Levandowski denies the allegations therein.

27 53. In response to Paragraph 53, Levandowski states that Stroz's report referenced
28 therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent

1 with the contents therein. Except as expressly admitted, Levandowski denies each and every
2 allegation in this Paragraph.

3 54. In response to Paragraph 54, Levandowski denies that he failed to disclose to Stroz
4 his involvement with Tyto. Levandowski further states that he lacks knowledge or information
5 sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each
6 and every allegation set forth therein.

7 55. In response to Paragraph 55, Levandowski states that the findings of the Google
8 Arbitration Panel referenced therein speaks for itself, and therefore denies any and all allegations
9 to the extent inconsistent with the contents therein.

10 56. In response to Paragraph 56, Levandowski states that the findings of the Google
11 Arbitration Panel referenced therein speaks for itself, and therefore denies any and all allegations
12 to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski
13 denies each and every allegation in this Paragraph.

14 57. In response to Paragraph 57, Levandowski states that the findings of the Google
15 Arbitration Panel referenced therein speaks for itself, and therefore denies any and all allegations
16 to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski
17 denies each and every allegation in this Paragraph.

18 58. In response to Paragraph 58, Levandowski admits he worked at Google in a
19 division referred to as "Project Chauffeur," participated in the Chauffeur Bonus Plan, and
20 received compensation for his work at Project Chauffeur. Except as expressly admitted,
21 Levandowski denies each and every allegation in this Paragraph.

22 59. In response to Paragraph 59, Levandowski states that the award entered by the
23 Google Arbitration Panel referenced therein speaks for itself, and therefore denies any and all
24 allegations to the extent inconsistent with the contents therein.

25 60. In response to Paragraph 60, Levandowski states that the Chauffeur Bonus Plan
26 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
27 inconsistent with the contents therein. Except as expressly admitted, Levandowski denies each
28 and every allegation in this Paragraph.

1 61. In response to Paragraph 61, Levandowski states that the Arbitration Award
2 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
3 inconsistent with the contents therein. Levandowski further states that he lacks knowledge or
4 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
5 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
6 denies each and every allegation in this Paragraph.

7 62. In response to Paragraph 62, Levandowski states that the Indemnification
8 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
9 extent inconsistent with the contents therein. Levandowski further states that this Paragraph
10 contains legal contentions as to which no response is required. Except as expressly admitted,
11 Levandowski denies each and every allegation in this Paragraph.

12 63. In response to Paragraph 63, Levandowski states that the Indemnification
13 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
14 extent inconsistent with the contents therein. Levandowski further states that this Paragraph
15 contains legal contentions as to which no response is required. Except as expressly admitted,
16 Levandowski denies each and every allegation in this Paragraph.

17 64. In response to Paragraph 64, Levandowski states that the Indemnification
18 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
19 extent inconsistent with the contents therein. Levandowski further states that this Paragraph
20 contains legal contentions as to which no response is required. Except as expressly admitted,
21 Levandowski denies each and every allegation in this Paragraph.

22 65. In response to Paragraph 65, Levandowski denies the allegations therein.

23 66. In response to Paragraph 66, Levandowski states that the Indemnification
24 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
25 extent inconsistent with the contents therein.

26 67. In response to Paragraph 67, Levandowski states that the Indemnification
27 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
28 extent inconsistent with the contents therein.

1 68. In response to Paragraph 68, Levandowski admits that Google requested
2 Levandowski's deposition in the Google Arbitration. Levandowski denies any and all remaining
3 allegations of Paragraph 68.

4 69. In response to Paragraph 69, Levandowski states that he lacks knowledge or
5 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
6 denies each and every allegation set forth therein.

7 70. In response to Paragraph 70, Levandowski states that the January 15, 2018 email
8 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
9 inconsistent with the contents therein. Levandowski further states that he lacks knowledge or
10 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
11 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
12 denies each and every allegation in this Paragraph.

13 71. In response to Paragraph 71, Levandowski states that the January 15, 2018 email
14 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
15 inconsistent with the contents therein.

16 72. In response to Paragraph 72, Levandowski denies the allegations therein.

17 73. In response to Paragraph 73, Levandowski admits that he sat for a deposition on
18 January 18, 2018. Levandowski further states that the transcript of the deposition proceedings on
19 January 18, 2018 referenced therein speaks for itself, and therefore denies any and all allegations
20 to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski
21 denies each and every allegation in this Paragraph.

22 74. In response to Paragraph 74, Levandowski states that the April 2, 2018 letter
23 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
24 inconsistent with the contents therein.

25 75. In response to Paragraph 75, Levandowski states that the April 2, 2018 email
26 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
27 inconsistent with the contents therein.

28 76. In response to Paragraph 76, Levandowski admits the allegations therein.

77. In response to Paragraph 77, Levandowski states that the April 24, 2018 decision of the Google Arbitration Panel referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

78. In response to Paragraph 78, Levandowski denies the allegations therein.

79. In response to Paragraph 79, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

80. In response to Paragraph 80, Levandowski denies the allegations therein.

81. In response to Paragraph 81, Levandowski denies the allegations therein.

82. In response to Paragraph 82, Levandowski admits that Uber, who was not a party to the Google Arbitration, did not present evidence on allocation of damages at the hearing. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

83. In response to Paragraph 83, Levandowski denies the allegations therein.

84. In response to Paragraph 84, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

85. In response to Paragraph 85, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

COUNT 1

86. In response to Paragraph 86, Levandowski refers to its responses to the allegations in all of the above Paragraphs and incorporates by reference such responses as if set forth herein.

1 87. In response to Paragraph 87, Levandowski states that the Arbitration Award and
2 subsequent judgment referenced therein speak for themselves, and therefore denies any and all
3 allegations to the extent inconsistent with the contents therein.

4 88. In response to Paragraph 88, Levandowski states that this Paragraph contains legal
5 contentions as to which no response is required. Except as expressly admitted, Levandowski
6 denies each and every allegation in this Paragraph.

7 89. In response to Paragraph 89, Levandowski states that this Paragraph contains legal
8 contentions as to which no response is required. Except as expressly admitted, Levandowski
9 denies each and every allegation in this Paragraph.

10 90. In response to Paragraph 90, Levandowski states that this Paragraph contains legal
11 contentions as to which no response is required. Except as expressly admitted, Levandowski
12 denies each and every allegation in this Paragraph.

13 91. In response to Paragraph 91, Levandowski states that the Indemnification
14 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
15 extent inconsistent with the contents therein. Levandowski further states that this Paragraph
16 contains legal contentions as to which no response is required. Except as expressly admitted,
17 Levandowski denies each and every allegation in this Paragraph.

18 92. In response to Paragraph 92, Levandowski states that the Indemnification
19 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
20 extent inconsistent with the contents therein. Levandowski further states that this Paragraph
21 contains legal contentions as to which no response is required. Except as expressly admitted,
22 Levandowski denies each and every allegation in this Paragraph.

23 93. In response to Paragraph 93, Levandowski states that the Indemnification
24 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
25 extent inconsistent with the contents therein. Levandowski denies all other allegations herein.

26 94. In response to Paragraph 94, Levandowski states that this Paragraph contains legal
27 contentions as to which no response is required. Except as expressly admitted, Levandowski
28 denies each and every allegation in this Paragraph.

95. In response to Paragraph 95, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

96. In response to Paragraph 96, Levandowski denies that Uber is entitled to relief. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

COUNT II

97. In response to Paragraph 97, Levandowski refers to its responses to the allegations in all of the above Paragraphs and incorporates by reference such responses as if set forth herein.

98. In response to Paragraph 98, Levandowski states that California Civil Code § 2774 speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Levandowski further states that this Paragraph contains legal contentions as to which no response is required.

99. In response to Paragraph 99, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

100. In response to Paragraph 100, Levandowski states that the indictment and the Arbitration Award referenced therein speak for themselves, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

101. In response to Paragraph 101, Levandowski states that the judgment in the matter, *United States of America v. Anthony Scott Levandowski*, Case No. 319-cr-00377-WHA (N.D. Cal.) referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein.

102. In response to Paragraph 102, Levandowski states that the findings of the Google Arbitration Panel, and the contents of Cal. Civ. Code § 2774 and Cal. Penal Code §§ 502(c)(1)

1 and (2) referenced therein speak for themselves, and therefore denies any and all allegations to
2 the extent inconsistent with the contents therein. Levandowski further states that this Paragraph
3 contains legal contentions as to which no response is required. Except as expressly admitted,
4 Levandowski denies each and every allegation in this Paragraph.

5 103. In response to Paragraph 103, Levandowski denies the allegations therein.

6 104. In response to Paragraph 104, Levandowski states that this Paragraph contains
7 legal contentions as to which no response is required. Except as expressly admitted,
8 Levandowski denies each and every allegation in this Paragraph.

9 105. In response to Paragraph 105, Levandowski states that this Paragraph contains
10 legal contentions as to which no response is required. Except as expressly admitted,
11 Levandowski denies each and every allegation in this Paragraph.

12 106. In response to Paragraph 106, Levandowski denies that Uber is entitled to any
13 relief, and denies the allegations therein.

14 **COUNT III**

15 107. In response to Paragraph 107, Levandowski refers to its responses to the
16 allegations in all of the above Paragraphs and incorporates by reference such responses as if set
17 forth herein.

18 108. In response to Paragraph 108, Levandowski states that the Indemnification
19 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
20 extent inconsistent with the contents therein.

21 109. In response to Paragraph 109, Levandowski denies the allegations therein.

22 110. In response to Paragraph 110, Levandowski states that the Indemnification
23 Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the
24 extent inconsistent with the contents therein.

25 111. In response to Paragraph 111, Levandowski states that the Indemnification
26 Agreement, amended complaint in the Waymo litigation, and Corrected Final Award referenced
27 therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent
28 with the contents therein. Levandowski admits that he received indemnification for certain legal

1 fees in connection with Google Arbitration. Levandowski further states that this Paragraph
2 contains legal contentions as to which no response is required. Levandowski further states that he
3 lacks knowledge or information sufficient to form a belief regarding the truth of the allegations
4 therein, and therefore denies each and every allegation set forth therein. Except as expressly
5 admitted, Levandowski denies each and every allegation in this Paragraph.

6 112. In response to Paragraph 112, Levandowski denies the allegations therein.

7 113. In response to Paragraph 113, Levandowski states that this Paragraph contains
8 legal contentions as to which no response is required. Levandowski further states that he lacks
9 knowledge or information sufficient to form a belief regarding the truth of the allegations therein,
10 and therefore denies each and every allegation set forth therein. Except as expressly admitted,
11 Levandowski denies each and every allegation in this Paragraph.

12 114. In response to Paragraph 114, Levandowski denies the allegations therein.

13 115. In response to Paragraph 115, Levandowski states that he lacks knowledge or
14 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
15 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
16 denies each and every allegation in this Paragraph.

17 116. In response to Paragraph 116, Levandowski states that the Google Arbitration
18 Award referenced therein speaks for itself, and therefore denies any and all allegations to the
19 extent inconsistent with the contents therein.

20 117. In response to Paragraph 117, Levandowski denies that Uber is entitled to any
21 relief. Levandowski further states that this Paragraph contains legal contentions as to which no
22 response is required. Except as expressly admitted, Levandowski denies each and every
23 allegation in this Paragraph.

24 118. In response to Paragraph 118, Levandowski states that this Paragraph contains
25 legal contentions as to which no response is required. Except as expressly admitted,
26 Levandowski denies each and every allegation in this Paragraph.

119. In response to Paragraph 119, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

120. In response to Paragraph 120, Levandowski denies the allegations therein and denies that Uber is entitled to any relief.

COUNT IV

121. In response to Paragraph 121, Levandowski refers to its responses to the allegations in all of the above Paragraphs and incorporates by reference such responses as if set forth herein.

122. In response to Paragraph 122, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

123. In response to Paragraph 123, Levandowski states that the Arbitration Award and the Indemnification Agreement referenced therein speak for themselves, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

124. In response to Paragraph 124, Levandowski states that the Arbitration Award referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

125. In response to Paragraph 125, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

126. In response to Paragraph 126, Levandowski denies the allegations therein.

127. In response to Paragraph 127, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

128. In response to Paragraph 128, Levandowski states that this Paragraph contains legal contentions as to which no response is required.

129. In response to Paragraph 129, Levandowski denies that Uber is entitled to any relief. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

COUNT V

130. In response to Paragraph 130, Levandowski refers to its responses to the allegations in all of the above Paragraphs and incorporates by reference such responses as if set forth herein.

131. In response to Paragraph 131, Levandowski admits that he invoked his Fifth Amendment privilege and that he was not permitted by the arbitrators to testify at the arbitration hearing. Levandowski further states that the Indemnification Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

132. In response to Paragraph 132, Levandowski states that the Indemnification Agreement referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

133. In response to Paragraph 133, Levandowski states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein.

134. In response to Paragraph 134, Levandowski denies the allegations therein.

135. In response to Paragraph 135, Levandowski states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

COUNT VI

138. In response to Paragraph 138, Levandowski admits that Uber and other parties entered into the Indemnification Agreement with Levandowski on April 11, 2016 as part of the transaction for Uber to acquire Otto. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

140. In response to Paragraph 140, Levandowski states that the document(s) reflecting Stroz's interview with Levandowski on March 22 and 23, 2016 referenced therein speaks for itself, but in any event, denies that the Stroz interview memo and notes are complete and accurate. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

1 to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski
2 denies each and every allegation in this Paragraph.

3 142. In response to Paragraph 142, Levandowski states that the document(s) reflecting
4 Stroz's interview with Levandowski on March 22 and 23, 2016 referenced therein speaks for
5 itself, and in any event, denies that the Stroz interview memo or notes are complete and accurate.
6 Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

7 143. In response to Paragraph 143, Levandowski states that the document(s) reflecting
8 Stroz's interview with Levandowski on March 22 and 23, 2016 referenced therein speaks for
9 itself, and therefore denies any and all allegations to the extent inconsistent with the contents
10 therein. in any event, denies that the Stroz interview memo or notes are complete and accurate.
11 Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

12 144. In response to Paragraph 144, Levandowski states that to the extent this Paragraph
13 refers to a written attestation, it speaks for itself, and therefore denies any and all allegations to
14 the extent inconsistent with the contents therein.

15 145. In response to Paragraph 145, Levandowski states that the written attestation
16 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
17 inconsistent with the contents therein.

18 146. In response to Paragraph 146, Levandowski states that the written attestation
19 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
20 inconsistent with the contents therein.

21 147. In response to Paragraph 147, Levandowski denies the allegations therein.

22 148. In response to Paragraph 148, Levandowski denies that he made fraudulent
23 representations and omissions with the intent of deceiving Uber and inducing it to enter into the
24 Indemnification Agreement. Levandowski further states that he lacks knowledge or information
25 sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each
26 and every allegation set forth therein. Except as expressly admitted, Levandowski denies each
27 and every allegation in this Paragraph.
28

1 149. In response to Paragraph 149, Levandowski states that he lacks knowledge or
2 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
3 denies each and every allegation set forth therein.

4 150. In response to Paragraph 150, Levandowski denies the allegations therein.

5 151. In response to Paragraph 151, Levandowski denies the allegations therein.

6 152. In response to Paragraph 152, Levandowski denies the allegations therein.

7 153. In response to Paragraph 153, Levandowski states that he lacks knowledge or
8 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
9 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
10 denies each and every allegation in this Paragraph.

11 154. In response to Paragraph 154, Levandowski states that he lacks knowledge or
12 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
13 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
14 denies each and every allegation in this Paragraph.

15 155. In response to Paragraph 155, Levandowski states that he lacks knowledge or
16 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
17 denies each and every allegation set forth therein. Except as expressly admitted, Levandowski
18 denies each and every allegation in this Paragraph.

19 156. In response to Paragraph 156, Levandowski denies that Uber is entitled to any
20 relief. Levandowski further states that this Paragraph contains legal contentions as to which no
21 response is required. Except as expressly admitted, Levandowski denies each and every
22 allegation in this Paragraph.

23 157. In response to Paragraph 157, Levandowski denies that Uber is entitled to any
24 relief. Levandowski further states that this Paragraph contains legal contentions as to which no
25 response is required. Except as expressly admitted, Levandowski denies each and every
26 allegation in this Paragraph.

27 158. In response to Paragraph 158, Levandowski denies that Uber is entitled relief, and
28 denies that any of Uber's claims for damages are non-dischargeable pursuant to 11 U.S.C. § 523

1 (a)(2)(A). Levandowski further states that this Paragraph contains legal contentions as to which
2 no response is required. Except as expressly admitted, Levandowski denies each and every
3 allegation in this Paragraph.

4 159. In response to Paragraph 159, Levandowski denies that he was the lead officer
5 responsible for Uber's self-driving car business during his tenure at Uber, and denies that any of
6 Uber's claims for damages are non-dischargeable pursuant to 11 U.S.C. § 523 (a)(2)(A).
7 Levandowski further states that this Paragraph contains legal contentions as to which no response
8 is required. Except as expressly admitted, Levandowski denies each and every allegation in this
9 Paragraph.

10 160. In response to Paragraph 160, Levandowski denies that any of Uber's claims for
11 damages are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Levandowski further states
12 that this Paragraph contains legal contentions as to which no response is required. Except as
13 expressly admitted, Levandowski denies each and every allegation in this Paragraph.

14 COUNT VII

15 161. In response to Paragraph 161, Levandowski refers to its responses to the
16 allegations in all of the above Paragraphs and incorporates by reference such responses as if set
17 forth herein.

18 162. In response to Paragraph 162, Levandowski denies the allegations therein.

19 163. In response to Paragraph 163, Levandowski states that he lacks knowledge or
20 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
21 denies each and every allegation set forth therein.

22 164. In response to Paragraph 164, Levandowski denies that Uber is entitled to relief on
23 its claim. Levandowski further states that this Paragraph contains legal contentions as to which
24 no response is required. Levandowski further states that he lacks knowledge or information
25 sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each
26 and every allegation set forth therein.

27 165. In response to Paragraph 165, Levandowski denies that Uber is entitled to relief on
28 its claim. Levandowski further states that this Paragraph contains legal contentions as to which

1 no response is required. Except as expressly admitted, Levandowski denies each and every
2 allegation in this Paragraph.

3 166. In response to Paragraph 166, Levandowski denies that Uber is entitled to relief on
4 its claim. Levandowski further states that this Paragraph contains legal contentions as to which
5 no response is required. Except as expressly admitted, Levandowski denies each and every
6 allegation in this Paragraph.

7 167. In response to Paragraph 167, Levandowski denies that Uber is entitled to relief on
8 its claim. Levandowski further states that this Paragraph contains legal contentions as to which
9 no response is required. Except as expressly admitted, Levandowski denies each and every
10 allegation in this Paragraph.

11 168. In response to Paragraph 168, Levandowski denies that Uber is entitled to relief on
12 its claim. Levandowski further states that this Paragraph contains legal contentions as to which
13 no response is required. Except as expressly admitted, Levandowski denies each and every
14 allegation in this Paragraph.

15 169. In response to Paragraph 169, Levandowski denies that he was the lead officer
16 responsible for Uber's self-driving car business during his tenure at Uber, and denies that Uber is
17 entitled to relief on its claim. Levandowski further states that this Paragraph contains legal
18 contentions as to which no response is required. Except as expressly admitted, Levandowski
19 denies each and every allegation in this Paragraph.

20 170. In response to Paragraph 170, Levandowski denies that Uber is entitled to relief on
21 its claim. Levandowski further states that this Paragraph contains legal contentions as to which
22 no response is required. Except as expressly admitted, Levandowski denies each and every
23 allegation in this Paragraph.

24 COUNT VIII

25 171. In response to Paragraph 171, Levandowski refers to its responses to the
26 allegations in all of the above Paragraphs and incorporates by reference such responses as if set
27 forth herein.

1 172. In response to Paragraph 172, Levandowski admits that Uber, Levandowski and
2 other parties entered into the Indemnification Agreement on April 11, 2016. Levandowski further
3 states that he lacks knowledge or information sufficient to form a belief regarding the truth of the
4 allegations therein, and therefore denies each and every allegation set forth therein.

5 173. In response to Paragraph 173, Levandowski states that he lacks knowledge or
6 information sufficient to form a belief regarding the truth of the allegations therein, and therefore
7 denies each and every allegation set forth therein.

8 174. In response to Paragraph 174, Levandowski admits that he was interviewed by
9 Stroz employees on March 22 and 23, 2016, and adds that he was interviewed again on April 2,
10 2016. Levandowski further states that the document(s) reflecting Stroz's interview with
11 Levandowski on March 22 and 23, 2016 referenced therein speaks for itself, and in any event,
12 denies that the Stroz interview memo or notes are complete and accurate. Except as expressly
13 admitted, Levandowski denies each and every allegation in this Paragraph.

14 175. In response to Paragraph 175, Levandowski denies the allegations therein.

15 176. In response to Paragraph 176, Levandowski denies the allegations therein.

16 177. In response to Paragraph 177, Levandowski states that the document(s) reflecting
17 Stroz's interview with Levandowski on March 22 and 23, 2016 referenced therein speak for
18 themselves, and in any event, denies that the Stroz interview memo or notes are complete and
19 accurate. Except as expressly admitted, Levandowski denies each and every allegation in this
20 Paragraph.

21 178. In response to Paragraph 178, Levandowski states that the writing referenced
22 therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent
23 with the contents therein.

24 179. In response to Paragraph 179, Levandowski states that the written attestation
25 referenced therein speaks for itself, and therefore denies any and all allegations to the extent
26 inconsistent with the contents therein.

189. In response to Paragraph 189, Levandowski states that the Corrected Final Award referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein.

190. In response to Paragraph 190, Levandowski states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein.

191. In response to Paragraph 191, Levandowski states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein.

192. In response to Paragraph 192, Levandowski denies the allegations therein.

193. In response to Paragraph 193, Levandowski denies the allegations therein.

194. In response to Paragraph 194, Levandowski denies that Uber's claims for contribution are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

195. In response to Paragraph 195, Levandowski denies that he was the lead officer responsible for Uber's self-driving car business during his tenure at Uber and denies that Uber's claims for contribution are non-dischargeable pursuant to 11 U.S.C. § 523(a)(2)(A). Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

196. In response to Paragraph 196, Levandowski denies that Uber is entitled to relief on its claim. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

COUNT X

197. In response to Paragraph 197, Levandowski refers to its responses to the allegations in all of the above Paragraphs and incorporates by reference such responses as if set forth herein.

198. In response to Paragraph 198, Levandowski admits that Uber served a proof of claim on July 6, 2020. The Proof of Claim contains legal conclusions that do not require a response. Except as expressly admitted, Levandowski denies the allegations in this Paragraph.

199. In response to Paragraph 199, Levandowski admits that on March 4, 2020, he filed a Chapter 11 voluntary petition. Levandowski further states that the Petition and documents filed therewith as referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein.

200. In response to Paragraph 200, Levandowski states that the Proof of Claim referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Levandowski further states that this Paragraph contains legal contentions as to which no response is required. Levandowski further states that he lacks knowledge or information sufficient to form a belief regarding the truth of the allegations therein, and therefore denies each and every allegation set forth therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

201. In response to Paragraph 201, Levandowski states that the Proof of Claim referenced therein speaks for itself, and therefore denies any and all allegations to the extent inconsistent with the contents therein. Except as expressly admitted, Levandowski denies each and every allegation in this Paragraph.

PRAYER FOR RELIEF

Levandowski denies that Uber is entitled to the requested relief or any relief.

AFFIRMATIVE AND ADDITIONAL DEFENSES

By way of further answer, Levandowski alleges and asserts the following defenses in response to the allegations contained in the Counterclaims. In this regard, Levandowski undertakes the burden of proof only as to the defenses that are deemed affirmative defenses by law, regardless of how such defenses are denominated in the instant Answer. Levandowski

1 reserves the right to amend or assert other affirmative defenses as this action proceeds based on
2 further discovery, legal research, or analysis that may supply additional facts or lend new
3 meaning or clarification to the claims contained in the Complaint.

4 **FIRST AFFIRMATIVE DEFENSE**

5 **WAIVER**

6 202. Levandowski incorporates by reference his responses in the preceding paragraphs
7 and the allegations made in the Complaint.

8 203. Uber's claims are barred, either in whole or in part, because it expressly or
9 impliedly waived its claims in this action.

10 204. In February 2016, Uber entered into a non-binding term sheet with Levandowski
11 to acquire Ottomotto and Otto Trucking. In connection with the contemplated acquisition, Uber
12 engaged the services of a third-party forensic investigator, Stroz Friedberg. The purpose of
13 engaging Stroz was to confirm that Google proprietary information was excluded from the assets
14 contemplated in the Uber-Otto transaction.

15 205. As part of the Stroz investigation, Stroz requested Levandowski to provide devices
16 to Stroz. Levandowski fully complied. Stroz conducted in-person interviews with Levandowski
17 in March 2016 to further detail the information stored on Levandowski's devices and clarify
18 assets in the proposed Uber-Otto transaction.

19 206. Levandowski's devices contain the very information that Uber claims is not
20 disclosed. Specifically, the devices that Stroz requested, and Levandowski provided in response
21 to that request, contained information disclosing the fact of Tyto, its assets, and its relationship to
22 Diligenced Employees. In fact, Levandowski repeatedly communicated to Uber during the Stroz
23 investigation that the most accurate information pertaining to assets contemplated in the Uber-
24 Otto transaction would be found on those devices themselves.

25 207. Uber continued with the Uber-Otto transaction anyway. Accordingly, Uber
26 entered into the Indemnification Agreement with Levandowski in connection with the closing of
27 the Uber-Otto transaction. It did so knowing that the Stroz investigation had not yet been
28 completed at that time, and in Levandowski's full disclosure of material information—including

1 Tyto—learned during the course of the Stroz investigation. In fact, the Stroz report was not
2 completed until August 2016, nearly four months after the Uber-Otto transaction consummated.

3 208. Uber, having full knowledge that the Stroz investigation was not complete, and
4 further having full knowledge that information was provided to it that were located on
5 Levandowski's devices, undertook the deliberate decision to consummate the transaction anyway.
6 Uber has waived its claim to now object to enforcement of the Indemnification Agreement based
7 on acts that it knew or should have known at the time of the bargained-for contract, but chose to
8 disregard.

9 209. Uber also waived its counterclaims in whole or in part by accepting
10 Levandowski's claim for indemnity without reservation of rights, including after stating its belief
11 that some of the information alleged by Google in the arbitration demands were not disclosed by
12 Levandowski to Stroz.

13 210. Uber further waived its counterclaims by waiting more than three years to raise
14 any defenses to the agreement. During that three-year period, Uber performed under the
15 Indemnification Agreement well after it was aware of any alleged basis for rescission, any now
16 alleged Post-Signing Specified Bad Act, and by affirming the Indemnification Agreement
17 expressly and impliedly.

18 211. Uber further waived any objections as to Excluded Claims because it failed to
19 disclaim liability and give notice of its reservation of rights at the time the indemnification
20 obligation arose under the Indemnification Agreement, even though it had full knowledge that the
21 Stroz investigation was not complete, and further had full knowledge that the information was
22 provided to it that were located on Levandowski's devices.

23 212. Levandowski relied on Uber's performance of its indemnity obligations for years,
24 including by giving Uber control of his defense and settlement ability, which has ultimately
25 proved to have been to his detriment.

26 213. Uber also waived each and every counterclaim by continuing to proceed with
27 closing the Otto Trucking transaction and acquiring that company. The Otto acquisition, Otto
28 Trucking acquisition, and the Indemnity were one transaction documented by the agreement

1 entered into on April 11, 2016. By proceeding to acquire Otto Trucking well after Uber was
2 aware of the allegations pled in the Counterclaim, Uber waived any of its claims for avoiding its
3 obligations under the Indemnification Agreement.

4 **SECOND AFFIRMATIVE DEFENSE**

5 **ESTOPPEL**

6 214. Levandowski incorporates by reference his responses in the preceding paragraphs
7 and the allegations made in the Complaint.

8 215. Uber's claims are barred, either in whole or in part, because it is equitably
9 estopped from pursuing its claims in this action.

10 216. In February 2016, Uber entered into a non-binding term sheet with Levandowski
11 to acquire Ottomotto and Otto Trucking. In connection with the contemplated acquisition, Uber
12 engaged the services of a third-party forensic investigator, Stroz Friedberg. The purpose of
13 engaging Stroz was to confirm that Google proprietary information was excluded from the assets
14 contemplated in the Uber-Otto transaction.

15 217. As part of the Stroz investigation, Stroz requested Levandowski to provide devices
16 to Stroz. Levandowski fully complied. Stroz conducted in-person interviews with Levandowski
17 in March 2016 to further detail the information stored on Levandowski's devices and clarify
18 assets in the proposed Uber-Otto transaction.

19 218. Levandowski's devices contain the very information that Uber claims is not
20 disclosed. Specifically, the devices that Stroz requested, and Levandowski provided in response
21 to that request, contained information disclosing the fact of Tyto, its assets, and its relationship to
22 Diligenced Employees. In fact, Levandowski repeatedly communicated to Uber during the Stroz
23 investigation that the most accurate information pertaining to assets contemplated in the Uber-
24 Otto transaction would be found on those devices themselves.

25 219. Uber continued with the Uber-Otto transaction anyway. Accordingly in April
26 2016, Uber entered into the Indemnification Agreement with Levandowski in connection with
27 consummating the Uber-Otto transaction. It did so knowing that the Stroz investigation had not
28 yet been completed at that time, and in Levandowski's full disclosure of material information—

1 including Tyto—learned during the course of the Stroz investigation. In fact, the Stroz report was
2 not completed until August 2016, nearly four months after the Uber-Otto transaction
3 consummated.

4 220. Uber, by its statements and conduct, intentionally and deliberately led
5 Levandowski to believe that it was satisfied with the Stroz investigation, or was satisfied with
6 continuing with the Uber-Otto transaction in the absence of the completion of the Stroz
7 investigation. Accordingly, Uber caused Levandowski to reasonably rely on those statements and
8 conduct, did not suggest at any time that further action was necessary from Levandowski to
9 correct or further perfect any aspect of the Stroz investigation in the course of due diligence for
10 the Uber-Otto transaction, and intended that the Uber-Otto transaction close. Uber therefore is
11 equitably estopped from asserting claims or take legal positions in contradiction to it.

12 221. Uber also is estopped from asserting any of the alleged claims because it has
13 accepted Levandowski's claim for indemnity without reservation of rights, including after stating
14 its belief that some of the information alleged by Google in the arbitration demands were not
15 disclosed by Levandowski to Stroz.

16 222. Uber is further estopped because it performed under the Indemnification
17 Agreement for years and well after it was aware of the alleged actions by Levandowski that give
18 rise to the counterclaims, thereby inducing Levandowski to rely on Uber's performance of the
19 Indemnification Agreement to his detriment.

20 223. Uber is further estopped from raising any objections as to Excluded Claims
21 because it failed to disclaim liability and give notice of its reservation of rights at the time the
22 indemnification obligation arose under the Indemnification Agreement, even though it had full
23 knowledge that the Stroz investigation was not complete, and further had full knowledge that the
24 information was provided to it that were located on Levandowski's devices.

25 224. Uber also is estopped from bringing each and every counterclaim by continuing to
26 proceed with closing the Otto Trucking transaction and acquiring that company. The Otto
27 acquisition, Otto Trucking acquisition, and the Indemnity were one transaction documented by
28 the agreement entered into on April 11, 2016. By proceeding to acquire Otto Trucking well after

1 Uber was aware of the allegations pled in the Counterclaim, Uber waived any of its claims for
2 avoiding its obligations under the Indemnification Agreement.

3 **THIRD AFFIRMATIVE DEFENSE**

4 **STATUTE OF LIMITATIONS—FRAUD**

5 225. Levandowski incorporates by reference his responses in the preceding paragraphs
6 and the allegations made in the Complaint.

7 226. Uber's claims are barred, either in whole or in part, under the applicable statute of
8 limitations.

9 227. In February 2016, Uber entered into a non-binding term sheet with Levandowski
10 to acquire Ottomotto and Otto Trucking. In connection with the contemplated acquisition, Uber
11 engaged the services of a third-party forensic investigator, Stroz Friedberg. The purpose of
12 engaging Stroz was to confirm that Google proprietary information was excluded from the assets
13 contemplated in the Uber-Otto transaction.

14 228. As part of the Stroz investigation, Stroz requested Levandowski to provide devices
15 to Stroz. Levandowski fully complied. Stroz conducted in-person interviews with Levandowski
16 in March 2016 to further detail the information stored on Levandowski's devices and clarify
17 assets in the proposed Uber-Otto transaction.

18 229. Levandowski's devices contain the very information that Uber claims is not
19 disclosed. Specifically, the devices that Stroz requested, and Levandowski provided in response
20 to that request, contained information disclosing the fact of Tyto, its assets, and its relationship to
21 Diligenced Employees. In fact, Levandowski repeatedly communicated to Uber during the Stroz
22 investigation that the most accurate information pertaining to assets contemplated in the Uber-
23 Otto transaction would be found on those devices themselves.

24 230. Uber continued with the Uber-Otto transaction anyway.

25 231. On July 16, 2020, Levandowski filed the instant complaint in the above captioned
26 matter. Uber filed its answer and counterclaims on August 17, 2020, raising among other things
27 fraud-based claims against Levandowski.

1 232. Uber knew or should have known the bases for its fraud-based claims, and
2 therefore Uber's fraud-based claims are barred, either in whole or in part, by the applicable statute
3 of limitations.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **STATUTE OF LIMITATIONS—CONTRIBUTION**

6 233. Levandowski incorporates by reference his responses in the preceding paragraphs
7 and the allegations made in the Complaint.

8 234. Uber's claims are barred, either in whole or in part, under the applicable statute of
9 limitations.

10 235. On December 23, 2019, the Google Arbitration Panel issued a Corrected Final
11 Award in the matter *Google, Inc. v. Anthony Scott Levandowski et al.* Upon information and
12 belief, on or about February 5, 2020, Uber tendered a payment in the amount of \$9,453,135.87 on
13 behalf of Lior Ron to Google in connection with the Corrected Final Award.

14 236. Uber was party in the matter, *Waymo LLC v. Uber Technologies, Inc. et al.*, Case
15 No. 3:17-cv-00939-WHA (N.D. Cal.), filed on February 23, 2017.

16 237. Upon information and belief, on February 8, 2018, Waymo and Uber executed a
17 settlement agreement (the "Waymo Settlement"). Further upon information and belief, Uber
18 entered into the Waymo Settlement for just consideration, and secured the release of claims in
19 exchange for, among other things, a \$245 million equity share to Waymo.

20 238. On July 16, 2020, Levandowski filed the instant complaint in the above captioned
21 matter. Uber filed its answer and counterclaims on August 17, 2020, seeking among other things
22 contribution against Levandowski for payments it made to Google in connection with the Waymo
23 Settlement and the Corrected Final Award.

24 239. Accordingly, Uber's contribution claims are barred, either in whole or in part, by
25 the applicable statute of limitations.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 **UNCLEAN HANDS**

1 240. Levandowski incorporates by reference his responses in the preceding paragraphs
2 and the allegations made in the Complaint.

3 241. Uber's claims are barred, either in whole or in part, because it has unclean hands.

4 242. In February 2016, Uber entered into a non-binding term sheet with Levandowski
5 to acquire Ottomotto and Otto Trucking. The term sheet contemplated that Uber would acquire
6 Ottomotto and Otto Trucking. The acquisition of Otto Trucking was a condition precedent for
7 Levandowski to agree to the Uber-Otto transaction. Without this agreement, Levandowski would
8 not have continued with the Uber-Otto transaction.

9 243. Accordingly, in April 2016, Uber and Levandowski executed the Indemnification
10 Agreement, the Otto Agreement, and the Otto Trucking Agreement. The Otto Trucking
11 Agreement provided Uber an option to acquire Otto Trucking, consistent with the terms
12 contemplated under the February 2016 term sheet. Under the Otto Trucking Agreement, Uber
13 was obligated to use "commercially reasonable efforts" to consummate the Otto Trucking merger,
14 which the parties intended to occur within forty-five (45) days of the exercise of the option.

15 244. In fact Uber never intended to acquire Otto Trucking. It fraudulently
16 misrepresented to Levandowski its true intentions so as to induce Levandowski to continue with
17 the Uber-Otto transaction. Levandowski relied on Uber's misrepresentations that it would pursue
18 in a good faith the Otto Trucking acquisition following the close of Uber's acquisition of
19 Ottomotto.

20 245. The Uber-Otto transaction closed on August 18, 2016. In November 2017, within
21 the close of the Call Option period, Uber exercised the call option acquire Otto Trucking by
22 providing notice of its decision.

23 246. After exercising its option to acquire Otto Trucking, Uber did not close, and never
24 intended to close, on the Otto Trucking acquisition in the required 45-day period. In fact Uber
25 unilaterally delayed and stalled the closing for nearly nine months. Upon information and belief,
26 during that time, Uber negotiated a settlement with Waymo whereby it agreed to an illegal no-
27 hire scheme with respect to Mr. Levandowski and any company affiliated with him, and also
28 agreed to divest him from Otto Trucking.

1 247. Uber then coerced Levandowski out of Otto Trucking, making it a condition to
2 acquiring that company, that Levandowski sell his shares.

3 248. Uber also refused to terminate the Otto Trucking merger agreement at that time as
4 it would give Levandowski right to an exclusive license to Uber's self-driving technology for use
5 in trucking.

6 249. Uber threatened to tie up Levandowski in protracted litigation unless he sold his
7 shares.

8 250. Uber then terminated the original Otto Trucking Merger Agreement without
9 disclosing this termination to Levandowski to obfuscate his right to the trucking IP license.

10 251. Uber's fraud in the course of the Uber-Otto transaction constitutes unclean hands,
11 and Uber's claims are barred, either in whole or in part, therefore.

12 252. Uber's hands are also unclean due to its inducement of Levandowski to bring over
13 Google employees to Uber and was fully aware and encouraged any solicitation by Levandowski
14 of Google employees.

15 253. Uber's hands are further unclean in that, upon information and belief, it agreed as
16 part of the Waymo Settlement to divest Levandowski from Otto Trucking. Further upon
17 information and belief, Uber also agreed with a competitor to an illegal no-hire agreement where
18 it agreed never to work with Levandowski or anyone affiliated with him ever again.

19 **SIXTH AFFIRMATIVE DEFENSE**

20 **RELEASE OF CLAIMS**

21 254. Levandowski incorporates by reference his responses in the preceding paragraphs
22 and the allegations made in the Complaint.

23 255. Uber's claims are barred, either in whole or in part, because it expressly or
24 impliedly released its claims in this action.

25 256. Uber was party in the matter, *Waymo LLC v. Uber Technologies, Inc. et al.*, Case
26 No. 3:17-cv-00939-WHA (N.D. Cal.), filed on February 23, 2017.

27 257. Upon information and belief, on February 8, 2018, Waymo and Uber executed a
28 settlement agreement. Further upon information and belief, the Waymo Settlement contained

1 releases in which Google and Uber agreed to release both known and unknown claims that have
2 or could be asserted against the other's past and former employees.

3 258. Upon information and belief, Uber entered into the agreement for just
4 consideration, and secured the release of claims in exchange for, among other things, a \$245
5 million equity share to Waymo.

6 259. Upon information and belief, the Waymo Settlement release includes
7 Levandowski. Further upon information and belief, Levandowski is a former employee as
8 understood in the Waymo Settlement agreement.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 **FAILURE TO MITIGATE DAMAGES**

11 260. Levandowski incorporates by reference his responses in the preceding paragraphs
12 and the allegations made in the Complaint.

13 261. Uber's claims are barred, either in whole or in part, because it failed to mitigate
14 damages.

15 262. In February 2016, Uber entered into a non-binding term sheet with Levandowski
16 to acquire Ottomotto and Otto Trucking. Because Levandowski anticipated litigation from his
17 former employer, Google, upon the disclosure of the contemplated Uber-Otto transaction, the
18 parties agreed that Uber would indemnify Levandowski in the event litigation were to occur, and
19 in the event damages were found against Levandowski. As a further condition of
20 indemnification, Uber required that Levandowski agree that Uber can control his legal defense.

21 263. In April 2016, Uber and Levandowski entered into the Indemnification Agreement
22 that memorialized these terms, among other things.

23 264. In February 2017, following the consummation of the Uber-Otto transaction,
24 Google filed a demand for arbitration captioned, Google, Inc. v. Anthony Scott Levandowski et
25 al. That arbitration demand alleged, among other things, that Levandowski downloaded 14,000
26 files from a Google server, and that those files were acquired by Uber in 2016.

265. Under the Indemnification Agreement, Uber had an obligation to indemnify Levandowski of legal expenses related to his defense, and further to indemnify any money judgment rendered against him.

266. In the course of the Google Arbitration, Levandowski made several proposals to Uber regarding settlement intended to facilitate a global settlement of all claims. Uber did not agree. Further, because Uber controlled Levandowski's legal defense, Levandowski could not agree, either. Uber unjustifiably and unreasonably denied Levandowski's settlement proposals to resolve the matter.

267. As a direct result of Uber’s unilateral decision to deny Levandowski’s interim settlement proposals, the arbitration proceeded to trial and final award.

268. On December 6, 2019, the Arbitration Panel issued a final award against Levandowski in the amount of approximately \$174 million.

269. Uber at all times acted unjustifiably and unreasonably in failing to consider interim settlement proposals that could resolve the dispute before the Arbitration Panel's final award. Accordingly, Uber's claims are barred, either in whole or in part, because it unjustifiably and unreasonably failed to mitigate damages.

EIGHTH AFFIRMATIVE DEFENSE

RATIFICATION

270. Levandowski incorporates by reference his responses in the preceding paragraphs and the allegations made in the Complaint.

271. Uber's counterclaims are barred by in whole or in part by the doctrine of ratification.

272. In February 2016, Uber entered into a non-binding term sheet with Levandowski to acquire Ottomotto and Otto Trucking. In connection with the contemplated acquisition, Uber engaged the services of a third-party forensic investigator, Stroz Friedberg. The purpose of engaging Stroz was to confirm that Google proprietary information was excluded from the assets contemplated in the Uber-Otto transaction.

1 273. As part of the Stroz investigation, Stroz requested Levandowski to provide devices
2 to Stroz. Levandowski fully complied. Stroz conducted in-person interviews with Levandowski
3 in March 2016 to further detail the information stored on Levandowski's devices and clarify
4 assets in the proposed Uber-Otto transaction.

5 274. Levandowski's devices contain the very information that Uber claims is not
6 disclosed. Specifically, the devices that Stroz requested, and Levandowski provided in response
7 to that request, contained information disclosing the fact of Tyto, its assets, and its relationship to
8 Diligenced Employees. In fact, Levandowski repeatedly communicated to Uber during the Stroz
9 investigation that the most accurate information pertaining to assets contemplated in the Uber-
10 Otto transaction would be found on those devices themselves.

11 275. Uber continued with the Uber-Otto transaction anyway. Accordingly, Uber
12 entered into the Indemnification Agreement with Levandowski in connection with the closing of
13 the Uber-Otto transaction. It did so knowing that the Stroz investigation had not yet been
14 completed at that time, and in Levandowski's full disclosure of material information—including
15 Tyto—learned during the course of the Stroz investigation. In fact, the Stroz report was not
16 completed until August 2016, nearly four months after the Uber-Otto transaction consummated.

17 276. Uber, having full knowledge that the Stroz investigation was not complete, and
18 further having full knowledge that information was provided to it that were located on
19 Levandowski's devices, undertook the deliberate decision to consummate the transaction anyway.
20 Uber has waived its claim to now object to enforcement of the Indemnification Agreement based
21 on acts that it knew or should have known at the time of the bargained-for contract, but chose to
22 disregard.

23 277. Uber further ratified any claim for rescission and exclusion by accepting
24 Levandowski's claim for indemnity without reservation of rights, including after stating its belief
25 that some of the information alleged by Google in the arbitration demands were not disclosed by
26 Levandowski to Stroz.

27 278. Uber further ratified any right to rescind the Indemnification Agreement or assert
28 any of these claims by waiting more than three years to raise any defenses to the agreement.

1 279. During that three-year period, Uber performed under the Indemnification
2 Agreement well after it was aware of any alleged basis for rescission, any now alleged Post-
3 Signing Specified Bad Act, and by affirming the Indemnification Agreement expressly and
4 impliedly.

5 280. Levandowski relied on Uber's performance of its indemnity obligations for years,
6 including by giving Uber control of his defense and settlement ability, which has ultimately
7 proved to have been to his detriment.

8 281. Uber also ratified any alleged conduct by Levandowski that Uber now claims is a
9 basis for avoiding its indemnity obligation by continuing to proceed with closing the Otto
10 Trucking transaction and acquiring that company. The Otto acquisition, Otto Trucking
11 acquisition, and the Indemnity were one transaction documented by the agreement entered into on
12 April 11, 2016. By proceeding to acquire Otto Trucking well after Uber was aware of the
13 allegations pled in the Counterclaim, Uber waived any of its claims for avoiding its obligations
14 under the Indemnification Agreement.

15 282. In addition, Uber impliedly and expressly ratified the alleged fraud, Post-Signing
16 Bad Acts, and other related claims by amending the Otto Trucking Merger Agreement, which
17 affirmed the entire transaction between Levandowski and the agreements made as part of that
18 transaction—the Otto acquisition, Indemnity, and Otto Trucking acquisition.

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Respectfully submitted,

By: /s/ Brett M. Schuman

Brett M. Schuman (SBN 189247)
bschuman@goodwinlaw.com
Rachel M. Walsh (SBN 250568)
rwalsh@goodwinlaw.com
GOODWIN PROCTER LLP
Three Embarcadero Center
San Francisco, California 94111
Tel.: +1 415 733 6000
Fax.: +1 415 677 9041

Hong-An Vu (SBN 266268)
hvu@goodwinlaw.com
GOODWIN PROCTER LLP
601 S. Figueroa Street, 41st Flr.
Los Angeles, California 90017
Tel.: +1 213 426 2500
Fax: +1 213 623 1673

**ATTORNEYS FOR PLAINTIFF AND
DEBTOR AND DEBTOR IN POSSESSION
ANTHONY LEVANDOWSKI**